



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Little People's Productivity Center, Inc.  
File: B-233069; B-233070  
Date: October 27, 1988

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### DIGEST

Where the agency did not contribute to an incumbent firm's failure to timely receive a solicitation, and the agency took all reasonable steps to furnish the firm the solicitation, the incumbent firm bears the risk of late receipt of the solicitation where adequate competition was otherwise obtained.

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### DECISION

Little People's Productivity Center, Inc. (LPPC) protests the award of contracts under request for proposals (RFP) Nos. F33657-88-R-0124 (RFP-0124) and F33657-88-R-0144 (RFP-0144), a 100 percent small business set-aside, issued by the Air Force for configuration management support and related management services. LPPC has submitted two identical protests which we will consider together. LPPC, the incumbent contractor, complains that it did not receive a copy of the RFPs until 1 week before the date for receipt of proposals and thus was not afforded an adequate opportunity to prepare its proposals. LPPC requests that the due date be extended until 21 days after receipt of our decision in this matter.

We dismiss the protest.

According to the protester's submissions, the requirement was synopsized in the Commerce Business Daily (CBD) on February 26, 1988. An earlier synopsis had been published on August 21, 1987. LPPC sent the Air Force a letter dated March 10, 1988, signed by Holly J. Waldren, Business Development Manager, on LPPC letterhead, which contained both a New York and an Ohio address. The letter specifically requested the Air Force to forward the solicitations to the Ohio address. The Air Force issued the RFPs on August 23, 1988. On that date, the Air Force forwarded a copy of the RFPs to LPPC's Dayton, Ohio address "in compliance with [LPPC's] direction." Apparently in response

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to previous letters from LPPC, the Air Force had earlier stated in a letter to LPPC's New York office dated March 10 that it was fully aware of the firm's desire to compete for the contracts in question. Moreover, in a letter dated March 25, also to LPPC's New York office, the Air Force advised LPPC that it was on the mailing list for the upcoming RFPs and that they should be mailed within the next 30 to 60 days.

In a letter to LPPC dated September 28, enclosed with LPPC's protest, the Air Force asserts that it mailed LPPC a copy of the solicitations to its Ohio address. However, the protester states that it did not receive the RFPs at either of its offices and that it was not until September 20 that it first learned that the solicitations had been issued. LPPC then requested a copy of the RFPs and requested an extension of the October 7 date for receipt of proposals to allow it adequate time to prepare its proposals. In the September 28 letter, the Air Force denied the request for the extension and mailed a copy of the RFPs via express mail to the protester, which it received on September 29. LPPC filed these protests with our Office on October 6, seeking an extension of the proposal due date. The agency has advised us that a total of 10 offerors submitted proposals for both RFPs on October 7. Five offers were received for RFP-0144, and seven were received for RFP-0124. LPPC submitted a proposal for RFP-0144.

In its protest, LPPC argues that the Air Force has arbitrarily failed to solicit LPPC, the incumbent contractor, by not sending it the solicitations until September 29. It also alleges that the Air Force has deliberately set a course of action to deny the protester an opportunity to participate in the procurement.

Under the Competition in Contracting Act (CICA) of 1984, agencies are required, when procuring property or services, to obtain full and open competition through the use of competitive procedures. 10 U.S.C. § 2301(a)(1) (Supp. IV 1986). "Full and open competition" is obtained when "all responsible sources are permitted to submit sealed bids or competitive proposals." 10 U.S.C. § 2302(3) and 41 U.S.C. § 403(7). The term has been further explained in the legislative history of CICA as meaning "all qualified vendors are allowed and encouraged to submit offers . . . and a sufficient number of offers is received to ensure that the government's requirements are filled at the lowest possible cost." H.R. Rep. No. 98-1157, 98th Cong., 2d Sess. 17 (1984). Accordingly, we give careful scrutiny to

an allegation that a firm has not been provided an opportunity to compete for a particular contract. Keener Mfg. Co., B-225435, Feb. 24, 1987, 87-1 CPD ¶ 208. In this regard, we have stated that significant deficiencies on the part of the agency that contribute to a firm's failure to receive a solicitation will result in our sustaining a protest. Abel Converting Co., B-229065, Jan. 15, 1988, 67 Comp. Gen. \_\_\_\_\_, 88-1 CPD ¶ 40.

Here, however, the protester's submissions clearly show that the agency did not contribute to LPPC's failure to timely receive the solicitations, but took all reasonable steps to ensure that LPPC was included in the procurement. The protester's documents show that the Air Force was aware of LPPC's desire to compete and that the Air Force mailed a copy of the RFPs on August 23 to the protester at the address the protester had specifically requested be used for that purpose.<sup>1/</sup> When the Air Force learned that the protester had not, in fact, received a copy of the solicitations, it then sent them by express mail to the protester. While LPPC has alleged that the Air Force's course of conduct excluded it from participating in the procurement, we think the Air Force's actions, as outlined above, demonstrate that it took all reasonable steps to include LPPC.<sup>2/</sup> In this regard, a bidder generally bears the risk of nonreceipt of solicitations and amendments. See Uniform Rental Service, B-228293, Dec. 9, 1987, 87-2 CPD ¶ 571. Thus, LPPC's argument that the Air Force failed to solicit

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1/ The protester now argues that the Air Force officials "should not have proceeded in accordance with any letter received from [Ms. Walden]," because they "knew or should have known that [she] is no longer employed by LPPC." While it is clear from this statement that LPPC would have preferred that the Air Force mail the solicitations to the New York address, the Air Force could not have known this at the time. Further, even if the Air Force knew at the time of issuance that Ms. Waldren was no longer employed at LPPC, it could not be expected to disregard past correspondence written by her as an agent for LPPC.

2/ In support of its protest, LPPC cites Abel Converting, Inc. v. United States, 679 F. Supp. 1133 (D.D.C. 1988). In that case, the court determined that there was not "full and open competition" in the absence of the incumbent because only two bids were received by the agency on certain contract line items. We simply note that here, however, the Air Force received five proposals under RFP-0124 and seven proposals under RFP-0144.

it by not timely sending a copy copies of the solicitations is without merit.

LPPC also complains that the solicitations were not issued until approximately 6 months after the last synopsis of the requirement appeared in the CBD, and thus that the synopsis provided prospective contractors only stale notice of the pending solicitations in violation of the Federal Acquisition Regulation (FAR). The FAR provides that notice of "contract action shall be published in the CBD at least 15 days before issuance of a solicitation." FAR § 5.203(a) (FAC 84-28). Obviously, there is no violation of the FAR here since notice was provided more than 15 days before solicitation issuance. Moreover, it is clear that the protester was not prejudiced by the allegedly "stale" notice--as set forth above, the protester's agent, in response to the synopsis, requested copies of the solicitations and the Air Force responded that the firm was on the mailing list and would be sent copies. Thus, the purpose of the synopsis clearly was satisfied with respect to the protester.

The protest does not state a valid basis for protest. Therefore, pursuant to 4 C.F.R. § 21.3(m) (1988), the protest is dismissed.



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